Decision and Order No.: 710

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of M[redacted] J[redacted] by Mount Horeb School District Board of Education	DECISION AND ORDER Appeal No.: 13-EX-08

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(c) from the order of the Mount Horeb School District Board of Education to expel the above-named pupil from the Mount Horeb School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 26, 2013.

In accordance with the provisions of Wis. Admin. Code Ch. PI § 1.04(5), this Decision and Order is confined to a review of the record of the school board hearing. The state superintendent's review authority is specified in Wis. Stat. § 120.13(1)(c). The state superintendent's role is to ensure that the required statutory procedures were followed, that the school board's decision was based upon one or more of the established statutory grounds, and that the school board was satisfied that the interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated October 23, 2013, from the district administrator of the Mount Horeb School District. The letter advised that a hearing would be held on October 28, 2013 that could result in the pupil's expulsion from the Mount Horeb School District through up to the pupil's 21st birthday. The letter was sent separately to the pupil and her parent by certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged:

> The expulsion proceeding is based upon [M's] possession of a "Kill List" she had written that contained the names of multiple students, a teacher and administrator at the Mt. Horeb School on October 21, 2013.

Because the pupil is a child with a disability, a manifestation determination review was conducted by the pupil's Individual Education Plan ("IEP") team on October 25, 2013. The pupil, her mother, and her grandmother were present at the meeting. The IEP team concluded that the pupil's conduct (i.e., possessing a "Kill List") was not caused by her learning disability. As a result, the IEP team created a revised IEP in preparation for the pupil's potential expulsion.

The hearing was held in closed session on October 28, 2013. The pupil, her mother, and her grandmother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, her mother, and her grandmother were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations. The pupil, her mother, and her grandmother did not contest any of the facts presented by the school district administration.

After the hearing, the school board deliberated in closed session. The board found that the pupil did engage in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated November 1, 2013, was mailed separately to the pupil and her parent. The order stated the pupil was expelled through end of the 2014-15 school year. Minutes and a digital recording of the expulsion hearing are part of the record. In addition, the school district, by its attorney, and the pupil's mother submitted briefs to the state superintendent.

DISCUSSION

School districts are limited-purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. Iverson v. Union Free High School District, 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from § 120.13(1)(c), which establishes certain categories of offenses that may be the basis for an expulsion and sets out specific procedures that must be followed in the expulsion process.

In reviewing an expulsion decision, the state superintendent must ensure that the required statutory procedures were followed, that the school board's decision is based upon one of the established statutory grounds, and that the school board is satisfied that the interests of the school district demand the pupil's expulsion. Madison Metropolitan School District v. Wis. D.P.I., 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

In the appeal letter, the pupil's mother ("appellant") raises several issues which require consideration. First, the appellant argues that the school board "more made an example out of [the pupil] than judged her based on the offense." In the Findings and Order of Expulsion, the school board states that its decision is based upon the pupil's possession of the "Kill List." It is undisputed that the pupil created the "Kill List." The state superintendent has consistently held that such conduct is grounds for expulsion. *See e.g.,* Nathan by the Delvan-Darien School Dist., (391) July 23, 1999; Damis M. by the Cadott School Dist., (397) August 20, 1999. The record contains no evidence that the school board sought to "make an example" of the pupil. Therefore, it was not reversible error for the school board to expel the pupil for creating and possessing a "Kill List."

Second, the appellant argues that the decision to expel the pupil was determined prior to the expulsion hearing. As support, the appellant points out that the manifestation determination meeting took place prior to the expulsion hearing. Federal law required the school district (i.e., administrators and staff) to conduct a manifestation determination "...within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct." 34 CFR § 300.530(e). If the behavior that gave rise to the violation is determined to not be a manifestation of the child's disability, then school personnel may apply the same disciplinary procedures as they would to a child without disabilities. 34 CFR § 300.530(c). Because the school district was simply complying its obligations under federal law, it was not reversible error to hold the manifestation determination meeting prior to the expulsion hearing.

Third, the appellant alleges that it was a conflict of interest for Assistant Principal Hanson to conduct the investigation of the pupil because Ms. Hanson was allegedly on the

pupil's "Kill List." The school board, as the trier of fact, determines whether a witness is biased. The school board's findings are conclusive and must be upheld upon review as long as any reasonable view of the evidence supports them. State ex rel DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W.2d 689 (1976). There is ample evidence in the record to support the school board's determination that the pupil created and possessed the "Kill List." Therefore, the school board's findings must be upheld.

Fourth, the appellant argues that the school district should have provided copies of the exhibits prior to the expulsion hearing. I strongly encourage school districts to provide copies of exhibits prior to an expulsion hearing because it allows students and their families to better prepare for the hearing. However, the state superintendent has consistently held that school districts are not required to do so. *See e.g.* N.K. by the Marshall School Dist., (620) May 15, 2008; B.S. by the Marshall School Dist., (626) July 11, 2008. Therefore, it was not reversible error for the school district to not provide the exhibits to the appellant prior to the hearing.

Fifth, the appellant argues that the pupil wanted to make comments at the expulsion hearing, but was "too afraid to talk at the hearing." An expulsion hearing can be an intimidating experience both for students and their parents. However, the record demonstrates that the pupil, her mother, and her grandmother were provided numerous opportunities to ask questions and provide testimony. Therefore, while the pupil's hesitation to speak is understandable, it is not grounds for reversal.

Finally, the appellant argues that the pupil had a psychiatric evaluation, which resulted in the pupil's doctor determining that the pupil did not have anger issues. While this information may have influenced the school board's decision, new evidence must be submitted to the school

board, not to the state superintendent on appeal. Tyler M. by Silver Lake Jt. 1 School Dist., (511) April 26, 2004; A.B. by the Milwaukee Public School Dist., (657) March 4, 2010.

In reviewing the record in this case, I find the school district complied with all the procedural requisites. I, therefore, affirm this expulsion.

CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of M[redacted] J[redacted] by the Mount Horeb School District Board of Education is affirmed.

Dated this 28th day of January 2014

Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction

PARTIES TO THIS APPEAL ARE:

[redacted]

[redacted]

Deb Klein
District Administrator
Mount Horeb School District
1304 E Lincoln St
Mount Horeb, WI 53572

APPEAL RIGHTS

Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

COPIES MAILED TO:

[redacted]

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